

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
American Association of Airport Executives
For
Security Services**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and American Association of Airport Executives' Airport Research and Development Foundation ("Contractor"), having offices at 601 Madison Street, Alexandria, VA 22314.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the Designated Aviation Channeling ("DAC") services and Computer Based Training ("CBT") solutions set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Kyle Herbig, Phone: (703) 797-2536, Email Address: kyle.herbig@aaae.org. The City's Contract Manager for the engagement shall be Diana Heath, Phone: (512) 530-6341, Email Address: Diana.Heath@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work, as described herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed \$1,026,702.00 for the initial term, \$335,333.00 for the first extension, and \$434,791.00 for the second extension, for a total estimated contract amount not to exceed \$1,796,826.00 comprising the software maintenance and support fees.

3.2 **Fee Payment.** In full payment for the Services to be provided, City shall pay the fees set forth in Exhibit C at the times and in the manner set forth herein

3.3 **Payment Procedures.** For DAC services, the City shall establish and maintain a deposit account on which Contractor shall have the limited authority to debit the fees set forth in Sections 2.2, 2.3, and 2.4 for each of City's enrollments. City shall retain full ownership of the deposit account and shall replenish such account balance periodically as needed. The Contractor shall notify City immediately at any time that there is an unavailability of funds in City's deposit account. City's deposit account can be replenished by ACH, wire transfer, check or credit card. Contractor will debit the City's deposit account for any ACH or electronic transfer fees incurred prior to releasing the funds for processing records. For support of CBT solutions, Contractor shall submit an invoice to the City on an annual basis. The City shall pay such invoice within thirty (30) calendar days of receipt.

3.4 **Invoicing.** The City's account will be debited through an automated system. However, for the purposes of corrections or other administrative purposes where an individual will be required to have access to the account, Contractor shall designate a qualified Contractor official, and alternate, with accounting responsibilities to have access to the deposit account.

The Contractor shall provide to the City the ability to view basic financial information on Contractor website through the Financial Information link. This information can be sorted and searched by the airport to provide an invoice itemizing with reasonable specificity the debits made by Contractor during the prior month. In the event City disputes any items, the parties shall work in good faith to resolve such disputes and make any necessary refunds and credits.

3.5 **Invoices.**

3.5.1 **Invoices for CBT shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Email Address	CTMAPInvoices@austintexas.gov
Address	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3.5.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.5.3 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.6 **Payment.**

3.6.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.6.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.6.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- 3.6.3.1 delivery of defective or non-conforming deliverables by the Contractor;
- 3.6.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- 3.6.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- 3.6.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.6.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.6.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.6.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.6.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.6.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.7 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.8 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.8.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.8.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.9 **Final Payment and Close-Out.**

3.9.1 The making and acceptance of final payment will constitute:

3.9.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.9.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to 2 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 **General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of

the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

OR

PURInsuranceCompliance@austintexas.gov

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B

(Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.2 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.3 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.5 **Ownership And Use Of Deliverables.**

5.5.1 The Contractor and City acknowledge that both parties and/or third parties retain all right, title and interest under applicable contractual, copyright, intellectual property, and related laws to their previously owned, developed or obtained intellectual property and any enhancements and modifications to same and in the databases and information contained therein used to provide either party's products or services hereunder, and the parties shall use such materials consistent with such right, title and interest and notify the applicable party of any threatened or actual infringement thereof.

5.5.2 The Contractor retains all its previously owned, developed or obtained intellectual property. The City shall use Contractor's intellectual property with such rights as necessary to perform the functions of Contractor's Automated Integration Services, and notify Contractor of any threatened or actual infringement thereof.

5.5.3 In the event that development work is undertaken under this contract by Contractor, which specifically excludes all previously owned, developed or obtained intellectual property, then any such developed items shall be owned by Contractor except in instances related to CBT solutions where Contractor develops City specific data or video, which are explicitly for the City and using the City's information, then such developed data and video shall be owned by the City.

5.5.4 The City shall not, except as required by applicable law (and then only to that extent):

- Reverse engineer, translate, disassemble, decompile the whole or any part of Contractor's service offering, solution or proprietary assets or otherwise attempt to access same;
- Assign, transfer, sell, license, sub-license, lease, rent, charge or otherwise deal in or encumber the proprietary material of Contractor or use the proprietary material of Contractor on behalf of or for the benefit of any third party, or make available the same in any way whatsoever to any third party without Contractor's prior written consent in a fashion contrary to the terms of this Agreement;
- Distribute, create derivative works of or modify proprietary material of Contractor in anyway, nor create or develop a competitive or similar offering to that of Contractor, nor use, copy, duplicate or display the proprietary material of Contractor on a commercial or development basis except as expressly provided under an agreement.

5.6 **Rights to Proposal and Contractual Material.** All proposal and contractual material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.7 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES AND LICENSING

6.1 **Grant of License.** Contractor is the owner of the Interactive Employee Training Learning System (IET-LS) software (the "Software") used to provide the CBT solutions as outlined in Exhibit B. Contractor grants the City a nontransferable, nonexclusive, limited license to use the Software. Legal title to the Software and Software documentation provided under this Agreement shall remain with Contractor as its sole property, subject to the City's rights specified in this agreement.

6.2 **Use of Software.** The parties agree that the Software is proprietary to Contractor. Contractor retains all intellectual property rights, including copyright, patent and trade secret rights and the City agrees that the Software and all related data whether oral or written, and furnished under this Agreement are provided for the City's (and its consultants and contractors) exclusive use for the purposes of this Agreement and will be held in confidence. The City agrees not to duplicate or disclose any information provided relative to the Software in whole or in part, for the use of others. The City will use the Software only for its own internal training purposes and will not use the Software in any manner for or by a third party.

6.3 **Warranty.** Contractor warrants that the software, hardware and training courses at the time of installation of CBT shall materially conform to the specifications agreed-upon. In case of a nonconformance, the City shall promptly notify Contractor. Contractor shall correct any nonconformance after notification within a reasonable time by the means it determines to be the most appropriate, whether by telephone instructions, the issuance of updating documentation, corrective code, hardware replacement or modification, or other methods.

Notwithstanding the warranties outlined above, Contractor makes no other warranties, express or implied, oral or written, and makes no representation or guarantees to City whatsoever and specifically disclaims all other warranties.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 **Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.2 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.3 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.4 known or anticipated sale, merger, or acquisition; or

7.4.5 any litigation against the Contractor related to the Contract;

7.5 **Audits and Records.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 The Contractor may not dispose of or destroy the City's data without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.7.3 Notwithstanding the aforementioned, in no event shall any party be liable for any special, indirect, exemplary, incidental, punitive, or consequential damages arising out of or otherwise relating to the use or performance of the Services.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office
ATTN: Gil Zilkha, Contract Administrator
P O Box 1088
Austin, TX 78767

To the Contractor:

American Association of Airport Executives
ATTN: Contract Manager
601 Madison Street
Alexandria, VA 22314

7.10 **Confidentiality.** Each party shall maintain in strict confidence, and agrees not to disclose to any third party, except as necessary for the performance of this Agreement when authorized by the other party in writing, Confidential Information that one party receives ("Recipient") from disclosing party ("Discloser"). "Confidential Information" means all non-public information of a competitively sensitive nature concerning the disclosing party, including, but not limited to: (a) software, data, and information regarding services, systems or products; (b) processes, procedures, operations, engineering or technology; (c) present product lines, including without limitation, their design, manufacture, marketing, quality control, costs, configurations and uses for such products, as well as the aforementioned information related to products which are the subject of either party's research and development; (d) customer lists, customer information, business plans or data, sales volumes, profitability figures, financial information or other economic or business information; or (e) any efforts undertaken by either party on behalf of their members or customers.

7.11 **Exceptions.** Confidential Information does not include: information that is or subsequently may come within the knowledge of the public generally through no fault of Recipient; information that Recipient can show was previously known to it as a matter of record at the time of receipt; information that Recipient may subsequently obtain lawfully from a third party who has lawfully obtained the information free of any confidentiality obligations; information that Recipient may subsequently develop as a matter of record, independently of disclosure by Discloser; or information made public pursuant to the Texas Public Information Act, currently codified under Texas Government Code Chapter 552.

7.12 **Duration.** With respect to Confidential Information not constituting a trade secret, this Agreement shall remain in full force and effect for a period of three (3) years; with respect to Confidential Information constituting a trade secret, this Agreement shall remain in full force and effect for so long as the Confidential Information constitutes a trade secret.

7.13 **Injunctive Relief.** Recipient acknowledges that disclosure of any Confidential Information by it or its employees will give rise to irreparable injury to Discloser or the owner of such information, not adequately compensated by damages. Accordingly, Discloser or such other party may seek and obtain injunctive relief against the breach or threatened breach of this Section, in addition to any

7.14 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.15 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.16 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the

performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.17 Prohibition Against Personal Interest in Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.18 Independent Contractor. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.19 Assignment-Delegation. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.20 Waiver. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.21 Modifications. The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.22 Interpretation. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.23 Dispute Resolution.

7.23.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.23.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator

within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.24 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.24.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.24.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.24.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.25 **Subcontractors.**

7.25.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.25.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.25.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.25.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.25.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.25.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.25.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.25.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.25.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.26 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.27 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.28 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.29 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.30 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal

Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.31 **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.32 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

- 7.32.1 any exceptions to the Offer accepted in writing by the City;
- 7.32.2 the Supplemental Purchase Terms and Conditions;
- 7.32.3 the Standard Purchase Terms and Conditions;
- 7.32.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

American Association of Airport Executives

By: *Carter Morris*
Signature

Name: Carter-Morris
Printed Name

Title: EVP

Date: 8/20/19

CITY OF AUSTIN

By: *Bill Bilka*
Signature

Name: Bill Bilka
Printed Name

Title: Contract Management Specialist III

Date: 8/22/19

List of Exhibits

Exhibit A	Designated Aviation Services Statement of Work
Exhibit B	Computer Based Training Solutions Statement of Work
Exhibit C	Fees and Payment
Exhibit D	Non Discrimination Certification, Section 0800

EXHIBIT A

Designated Aviation Channeling Services Statement of Work

The Contractor is a Transportation Security Administration (TSA) approved Designated Aviation Channeler (DAC) for: (1) the statutorily required biometric checks; (2) the TSA mandated biographical data checks; and (3) the optional subscription to the TSA Aviation FBI Rap Back Program.

Specifically, Contractor's channeling responsibilities include the receipt and processing of mandated background investigations, consisting of a fingerprint-based criminal history records check and biographical security threat assessment, of each individual employed in, or applying for, a position in which the individual: (1) has unescorted access, or may permit other individuals to have unescorted access, to aircraft of an air carrier or foreign air carrier or a secured or sterile area of an airport in the United States; (2) will be responsible for screening passengers or property to be carried aboard an aircraft; (3) is a supervisor of the individuals described in (2) above; (4) who exercises security-related functions associated with aircraft, or performs their duties in sensitive areas of the aviation system, as the TSA Administrator determines is necessary to ensure air transportation security; and (5) is an airport operator employee or agent known as a trusted agent who collects information from applicants and current airport identification media holders used for Criminal History Record Checks (CHRC) and Security Threat Assessments (STA) checks, transmits the information to Contractor, authorizes the issuance of identification media, or issues the identification media.

In consideration of the fees paid pursuant to the terms of the Agreement, Contractor will collect and process CHRC and STAs.

The Contractor service obligations are:

- Collecting the City's aviation worker fingerprints, biographical data and required payments for processing the background investigations and immediately forwarding each fingerprint to TSA or another appropriate Federal agency for processing, using electronic means to transmit electronic prints.
- Digitizing inked fingerprint card submissions and forwarding them electronically. The Contractor takes all necessary steps required to ensure that the fingerprints are not altered in any way from their original condition.
- Enrolling the City into the TSA Aviation FBI Rap Back program, managing the City's subscription and providing support to the City for the program's reporting requirements.
- Utilizing Contractor's fingerprint tracking process, which allows for accurate fingerprint submission status at any point in the background check process.
- Performing "real-time" processing to transmit fingerprints to the federal system.
- Providing quality assurance and error corrections, when possible, allowing for the maintenance of one of the best error rates in the U.S. for submissions to the FBI.
- Providing superior customer support to City for questions regarding Contractor services and coordinating the resolution of City problems regarding TSA technical and procedural issues.
- Ensure that the City data transmitted to TSA is secured in accordance with the Federal Information Security Management Act (FISMA), DHS 4300a controls, and appropriate DHS and TSA security policies.
- Ensure that processes are in strict accordance with TSA and FBI regulations and guidance and Contractor maintains the highest standards for privacy of the employee information.

The City's obligations are:

City agrees to use Contractor as a DAC for the aviation worker vetting programs outlined above for the term of the agreement and so long as Contractor is accepted as a DAC by TSA.

City shall perform all obligations required to support Contractor in performing the services, including, but not limited to:

- Delivering to Contractor formatted data, associated supporting documentation, and certification, as required by TSA;
- Establishing and maintaining secure and reliable communication with Contractor and keep the communication methods in good working order; and
- Providing Contractor with complete and accurate documents and biometric data for each aviation worker program applicant and in a form and format that is reasonably acceptable to Contractor.

Exhibit B

Computer Based Training Solutions Statement of Work

The following is the maintenance support and service plan for the CBT solutions, also known as the Interactive Employee Training (IET).

Maintenance Support / Service Plan – Training Room Desktops

Services	Description
8AM - 8PM EST Monday-Friday Phone Support	Includes technical telephone support between the hours of 8AM & 8PM EST Monday – Friday (except Federal holidays).
Database Support	Includes complete maintenance of the database and 24/7 availability of all user data. Contractor ensures data integrity by using overlapping Internet service providers (ISPs), firewall protection for the on-site and remote servers and the daily back up of all data.
Helpdesk Ticketing System	Contractor implements a helpdesk ticketing system to improve the quality of service, accountability, and customer satisfaction.
System Updates and Patches	Includes all operating and video-quality system updates and patches developed by Contractor with remote installation.
Live Online Tech Diagnostic Session	This service allows an in-house technician to remotely take control of a system, following physical authorization on the user end (for security purposes). The tech remotely can diagnose issues.
Live Online Tech Remote Support	This service allows an in-house technician to remotely take control of a system, following physical authorization on the user end (for security purposes). The tech remotely can diagnose issues, download and replace files, and in many cases have the system operational again without having to dispatch an onsite technician.
Interactive Course Changes	Includes periodic editing of test questions and other interactive modifications that can be accomplished in the Contractor studio/edit facilities. This package comes with a standard allowance of 32 hours per year of labor . These allowance hours may be used for interactive course changes. Each additional hour of labor over the maximum amount will be billed at a rate of \$150/hour.
Train the Trainer	Includes an annual on-site visit for the purpose of introducing our IET training system to new staff or to hold a Q&A session for staff that are familiar with IET. Our hands on approach will also be an opportunity for us to demonstrate any new tools or features of IET.
Regulatory Requirements	Package includes updates to course material and videos to remain compliant with federal regulatory changes.
Custom Content/Video Changes	Allows for periodic changes/additions to a custom or Value-Added video course that can be accomplished in the Contractor studio/edit facilities. This package comes with a standard allowance of 32 hours per year of labor . These allowance hours may be used for custom content / video changes. Each additional hour of labor over the maximum amount will be billed at a rate of \$150/hour.
Software Enhancements and Updates	Includes periodic Learning Suite and Player enhancements Contractor will make to the IET-LS platform to increase efficiency and automation of the software and training operation.
\$12,000.00 Allowance Fund	Includes monetary allowance, which can be used for such services as hardware repair/replacement not covered in manufacturer’s warranty, video or interactive course changes, new course production, etc. Unused contracted allowance expires 24 months after contract inception.

Exhibit C

Fees and Payment

City shall pay the fees set forth in this Exhibit for the Services performed by Contractor as outlined in the Agreement.

Fees for DAC Services

Effective January 1, 2019:

SERVICE	PRICE
Per Electronic Applicant Pre-Enrollment – With Automated Web-Based Fingerprint Capture	\$1.00
Per Electronic Criminal History Record Check (CHRC) with Automated Web-Based Fingerprint Capture *Includes FBI fee – \$11.25 per CHRC effective January 1, 2019	\$28.25
Per Electronic Resubmission of Criminal History Record Check (CHRC) with Automated Web-Based Fingerprint Capture *Includes FBI fee –\$11.25 per CHRC effective January 1, 2019	\$30.25
Per Security Threat Assessment (STA)	\$11.00
Per Rap Back subscription	\$2.00

Contractor reserves the right to adjust the following fees in case of a material change in the CHRC and STA programs including a price adjustment for the CHRC or STA by TSA or other government entity.

Fees for support of Computer Based Training (CBT) Solution:

The City shall pay Contractor \$29,600.00 annually.

EXHIBIT D
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 20th day of August, 2019

CONTRACTOR
Authorized
Signature

Title

AAAE/ARDF
Contract Manager
EVP



City of Austin Purchasing Office

Sole Source Certificate of Exemption

DATE: January 3, 2019

DEPT: Aviation

TO: Purchasing Officer or Designee

FROM: Henry Zuniga

PURCHASING POC:

PHONE: 512 530 2434

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- Films, manuscripts or books that are available from only one source.
- Gas, water and other utilities that are available from only one source.
- Captive replacement parts or components for equipment that are only available from one source.
- Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed? The purpose of this Agreement is to provide Designated Aviation Channeling (DAC) services and support of Computer Based Training (CBT) solutions to operate the airport effectively and efficiently, in accordance with federal regulations (CFR 49 1542.209 and FAA Part 139). This contract will combine two existing service contracts with the Vendor into a single master agreement. The contract will provide services necessary for conducting Security Threat Assessments (STA) and Criminal History Records Checks (CHRC) on all persons requiring unescorted access to any security areas of the airport and FAA required computer based training services as mandated by the FAA.
- What is the municipal purpose that this procurement addresses or furthers? This is a federally mandated process for the airport. It is utilized as part of the requirement for an automated access control system under CFR 49 1542.211 and FAA Part 139, which supports the operation of airlines, tenants, and all other employees of the airport.
- Why is the procurement a sole source? These processes must be conducted using a Transportation Security Administration (TSA) approved Direct Aviation Channeler (DAC). When Federal requirement CFR 49 1542.211 was originally implemented, the Vendor's Transportation Security Clearinghouse (TSC) was the only approved DAC and the Airport entered into a service contract with the Vendor for these services. All current records for the airport's approximately 5000 credentialed employees are maintained in the Vendor's TSC proprietary database. Additionally, the Airport uses the Vendor's computer based training program, Interactive Employee Training (IET), to provide FAA mandated required security training for all airport employees. The Vendor owns the proprietary software integration that consolidates credential holder information and training records within the TSC database. Only the Vendor can provide the integration between the two systems.
- Has this procurement or a similar procurement been competitively solicited in the past? No.
- Why is the vendor the only viable solution? This vendor provides the only solution that will allow the airport to maintain access to the TSC database (which contains the STA and CHRC histories of current credential holders) and to maintain the ability to integrate IET and TSC records.
- Are there any other alternative solutions? If so, why are those alternatives unacceptable? While there are other DACs, they do not offer a direct integration with the current employee training system. Change to a new DAC would require that all current credentialed employees have new fingerprints captured and submitted to the new DAC.
- Is there a concern regarding warranty, compatibility, and/or routine safety? Since the TSA mandates recurrent threat assessments, all existing records would need to be converted to and maintained as hard files during a transition to a new DAC.
- Are there territorial or geographic restrictions for the product distribution and sale? No.
- Are there other resellers, distributors, or dealers in the market? No.
- What other suppliers or products/services were considered? None.
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new? Not applicable to this purchase as it is services that are hardware independent.
- Is there a way to retrofit another brand? What is this estimated associated cost? There is no means to transfer current enrollments from one DAC to another. All current enrollees would have to be entered manually into a new DAC. Processing costs for enrollment of all current badge holders into a new DAC would be an additional approximate \$450,000 and stretch over at least twelve months. Additional costs for transportation and lost productivity would also be applicable as persons would have to report in person to the airport to complete this process. There is not a means to bridge any other DAC to the current training system. A manual link would be required which would correlate to longer processing times and added expense.
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor? Certification as an approved Direct Aviation Handler (DAC) through the Transportation Security Administration.
- **Prices were determined to be reasonable based on the following (select all that apply):**

- Prices are the same or similar to current City contract.
Notes: Current contract NS080000048 and NS180000019
- Prices are the same or similar to current contract with another government.
Notes: At a minimum, note the contract number, title and government that created the contract.
- Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
- Prices are established by law or regulation.
Notes: At a minimum, note the legal or regulatory reference that established the prices.
- Other means of determining Price Reasonableness.
Notes: Describe any other source that was used to establish Price Reasonableness.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

Department Description of Purchase:

The contract will provide services necessary for conducting Security Threat Assessments and Criminal History Records Checks per Transportation Security Administration regulation CFR 49 1542.209 and required computer based training services to fulfill FAA Part 139 regulations. All persons requiring unescorted access to any security areas of the airport are subject to these requirements.

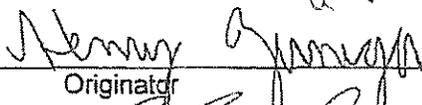
The American Association of Airport Executives (AAAE) has the sole protected distributorship of integrated Interactive Employee Training and Designated Aviation Channeling databases in the United States. There are no other authorized distributors.

Updates to the Interactive Employee Training and integration with the Transportation Security Clearinghouse database is not available from a competitive source as both systems are proprietary and customized by AAAE. Each system is connected to a separate, centralized database maintained and managed by AAAE. The secure databases store employee background and training records.

This contract will allow the airport to combine multiple service agreements with the American Association Of Airport Executives (AAAE) into a single Master Agreement for the purpose of providing Designated Aviation Channeling (DAC) services and support of Computer Based Training (CBT) solutions to operate the airport in accordance with federal regulations (CFR 49 1542.209 and FAA Part 139). This contract will combine two existing service contracts with AAAE (NS080000048 for Designated Aviation Channeling services, and NS180000019 for Computer Based Training solutions support) into a single master agreement.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:
- Scope of Work or Statement of Work or Vendor Proposal
 - Vendor's Quote
 - Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
 - Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why
4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with
- American Association of Airport Executives for a Service Agreement for Designated Aviation Channeling (DAC) services and support of Computer Based Training (CBT) solutions
5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:
- This is a one-time request for \$ _____
 - This is a multi-term contract request for 36 months in the amount of \$ 1,026,702.00 with 2 renewal options for \$335,333.00 (option 1) and \$434,791.00 (option 2) for a total contract amount of \$1,796,826.00.

Recommended Certification



 Originator Date 1/4/19

Approved Certification



 Department Director or designee Date 1/10/19



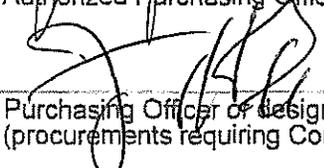
 Assistant City Manager / General Manager Date 1/10/19
 (procurements requiring Council approval)

Purchasing Office Review



 Authorized Purchasing Office Staff Date 3/7/19

Purchasing Office Management Review



 Purchasing Officer or designee Date 3/7/19
 (procurements requiring Council approval)

AMERICAN ASSOCIATION  OF AIRPORT EXECUTIVES

AAAE DELIVERS SERVICE. INNOVATION. RESULTS.

March 14, 2019

Austin-Bergstrom International Airport
3600 Presidential Blvd, Suite 411
Austin, TX 78719

RE: Sole Source Justification

To Whom It May Concern:

The American Association of Airport Executives (AAAE), based in Alexandria, VA, is the sole protected distributor of Transportation Security Clearinghouse (TSC) software for airports in the United States. There are no other authorized distributors for this proprietary software.

In 2002 Austin-Bergstrom International Airport (ABIA) partnered with the American Association of Airport Executives' (AAAE) Transportation Security Clearinghouse through a sole source purchase agreement as its Designated Aviation Channeler to comply with Federal Aviation Administration (FAA) security regulations, and now current Transportation Security Administration (TSA) regulations, for federally mandated airport badge-holder background checks.

The TSC software in place at ABIA is used to securely submit biographic and biometric data to the federal government in compliance with federal regulations, including TSA Security Directive (SD) 1542-04-08 Series. The TSC software is also exclusively capable of directly integrating with ABIA's existing Interactive Employee Training (IET) software used to facilitate compliance with applicable FAA-mandated training and record keeping requirements pursuant to 14 CFR Part 139. As it is necessary for all records to be consistent, and results reported to the same central database, it is necessary to perform TSC software updates through AAAE as it is the only provider of the TSC services. Maintenance and version deployments of this proprietary system can exclusively be performed by AAAE.

It is our pleasure to continue serving ABIA. Please do not hesitate to contact me with any questions or concerns.

Regards,



Sarah Pilli
Vice President, AAAE Services
American Association of Airport Executives
Sarah.Pilli@aaae.org
(703) 797-2542